



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 971 OF 2014

GRACE MUTHONI GICHUNGA.....APPELLANT

VERSUS

SAMUEL KIBUI MBIRWA.....1ST RESPONDENT

SAMSON KAMAU GICHERU.....2ND RESPONDENT

ZIPPORAH NJERI MBURU.....3RD RESPONDENT

RULING

The Appellants seek an order to restrain the Respondents from disposing, selling, alienating or evicting the Appellant from the land known as Dagorretti/Thogoto/315 (“the Suit Property”) pending hearing and determination of the intended appeal. The application is made on the grounds that this court dismissed the Appellant’s appeal on 13/3/2018 and by so doing the orders of injunction granted on 16/12/2011 were vacated. The Appellant is apprehensive that she may be evicted from the Suit property by the 2nd and 3rd Respondents who have threatened to evict her. The Appellant urges that her intended appeal will be rendered nugatory if the Respondents enforce the eviction and that she will be rendered destitute.

The application is supported by the Appellant’s affidavit in which she depones that being dissatisfied with this court’s judgement delivered on 13/3/2018, she instructed her advocates to lodge an appeal and that a notice of appeal was filed in the Court of Appeal. She therefore seeks the protection of the court to restrain the Respondents from dealing with or evicting her from the Suit Property which actions she claims will render her appeal nugatory.

The 2nd and 3rd Respondents opposed the application through their Replying Affidavit filed on 16/5/2018. They contend that the application is an attempt to prevent them from enjoying the Suit Property which they legally purchased from the 1st Respondent. They are not aware of any intended appeal. They also aver that the Appellant will not be left destitute she owns some other land and it is her son who occupies the Suit Property. They therefore, submit that the intended appeal is weak and has minimal chances of success.

The 1st Respondent filed his Replying Affidavit on 16/5/2018 in which he opposed the grant of the orders sought. He depones that he sold and transferred the Suit Property to the 2nd and 3rd Respondents and that the current application is intended to defeat the judgement of this court.

Parties made oral submissions on the application. The Applicant intends to appeal against this court’s judgment and urges that the court has jurisdiction to grant an injunction under Rule 42 (6) of the Civil Procedure Rules. Being a land matter, the Appellant wishes to exhaust her rights by pursuing a further appeal. She contends that the Respondents will not suffer any prejudice. The 1st Respondent emphasized the fact that that the Appellant does not stay on the suit land. He submitted that the Respondent’s son who stays on the Suit Property has refused to move out and will continue to disturb him yet he sold the suit land to the 2nd and 3rd Respondents. The 2nd and 3rd Respondents submitted that granting the injunctive orders sought will aid the Appellant to continue enjoying the property to their detriment yet they bought the land seven years ago. They submitted that they have been prejudiced while the appeal was pending before this court and that granting an injunction will continue to prejudice them since the appeal may take long to be determined. The Appellant contended that the balance of convenience tilted in favour of allowing the person on the land to continue being on the suit land until the appeal is heard and determined.

The court has considered the application, the replying affidavits together with the submissions of counsel. The Appellant did not challenge the Respondents assertion that she does not reside on the suit land and will not therefore suffer substantial loss if the orders sought are not granted. The court is of the view that if the appeal is successful the court can order the 2nd and 3rd Respondents to vacate the Suit Property hence the Appellant does not stand to suffer irreparable damage which cannot be compensated by an award of damages. The Appellant has not met the requirements for the grant of injunctive relief.

The court finds no merit in the application dated 5/4/2018 and dismisses it with costs to the Respondents.

Dated and delivered at Nairobi on this 10th day of July 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Machira holding brief for Mr. Mutiso for the for the Plaintiff

Mr. Samuel Kibui Mbirwa- 2nd Defendant

Ms. Kiget holding brief for Mr. Ngugi for the 2nd and 3rd Defendants

Mr. V. Owuor- Court Assistant